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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,881	01/18/2002	Albert E. Johnson	4500-7 (04500.0012.6)	7900

26158 7590 08/07/2006

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EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,881

Applicant(s)

JOHNSON ET AL.

Examiner

Jennifer A. Boyd

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed May 23, 2006, have been entered and have been carefully considered. Claim 1 is amended and claims 1 – 13 are pending. The invention as currently claimed is unpatentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1 – 8 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Corry (US 2,942,327) in view of Gatto (US 6,539,898). The details of the rejection can be found in the Office Action dated December 23, 2005. The rejection is maintained.

The Applicant has amended claim 1 to require that the “outer layer maintains the appearance of a woven fabric without altering the structure of the outer layer”. Corry teaches the laminate as shown in Figures 4 and 5. The composite comprises a particular fabric, or “outer fabric layer”, in a particular spatial relationship with a second fabric, or “inner fabric layer”, which can be the same or different, and a flexible sheet material, or “adhesive waterproofing layer”, disposed between the two fabrics and adhered to adjacent surfaces of each (column 3, lines 45 – 55). It should be noted that the film is *between* the two fabric layers thus the outer surface of the outer layer maintains the woven fabric appearance.

4. Claims 9 – 10 and 13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Corry (US 2,942,327) in view of Gatto (US 6,539,898) as applied above, further in view of Druckman et al. (US 4,996,100). The details of the rejection can be found in the Office Action dated December 23, 2005. The rejection is maintained.

5. Claims 9 and 11 – 12 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Corry (US 2,942,327) in view of Gatto (US 6,539,898) as applied above, further in view of Swers et al. (US 6,557,590). The details of the rejection can be found in the Office Action dated December 23, 2005. The rejection is maintained.

Response to Arguments

6. Applicant's arguments filed May 23, 2006 have been fully considered but they are not persuasive.

Applicant argues Applicant's convertible top is different than the composite of Corry. Applicant argues that Corry does not recognize the problem of deterioration that results from exposure of cellulosic or other conventional yarns to the elements. The Examiner submits that Corry teaches Applicant's basic structure of a two fabrics laminated together with a film layer. Although Corry may have not recognized at the time of his invention the issue with deterioration of the outer fabric due to the elements, the Examiner submits that Gatto does provides motivation to coat the core yarns of Corry, and therefore, one practicing the invention of Corry, would be motivated to coat the yarns of Corry in order to create a fabric for outdoor use which exhibits resistance to color fade, abrasion, flame and mildew.

In response to applicant's argument that Gatto is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Gatto is reasonably pertinent to the particular problem with which the applicant was concerned, in particular heat stability and resistance to color fade, abrasion, flame and mildew. Therefore, although Gatto is directed to a horse blanket, Gatto is still considered to be analogous art because it is a fabric composite used in outdoor applications. Furthermore, Gatto provides motivation to incorporate extrusion-coated yarns in a covering for use in outdoor applications, such as the convertible top of Corry.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner submits that Gatto provides sufficient motivation to coat the individual yarns of the fabric of Corry motivated by the desire to increase heat stability and resistance to color fade, abrasion, flame and mildew, which is highly desirable in outdoor fabric applications.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

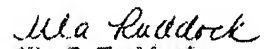
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jennifer Boyd
August 2, 2006



M. A. Ruddock
Primary Examiner
Tech Center 1700